

FILED

JAN - 7 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 STEPHEN CRUMP,)
8 Plaintiff(s),)
9 vs.)
10 PAROLE AGENT DEAN, et al.,)
11 Defendant(s).)
12 _____)
13

No. C 09-0022 CRB (PR)
ORDER OF DISMISSAL
(Doc # 2)

14 Plaintiff, a state prisoner currently released on parole, has filed a pro se
15 civil rights complaint under 42 U.S.C. § 1983 seeking relief for allegedly
16 unlawful deprivation of property he had at San Quentin State Prison.

17 Plaintiff also seeks leave to proceed in forma pauperis under 28 U.S.C. §
18 1915 (doc # 2), which, based solely on his affidavit of poverty, is GRANTED.

19 **DISCUSSION**

20 A. Standard of Review

21 Federal courts must engage in a preliminary screening of cases in which
22 prisoners seek redress from a governmental entity or officer or employee of a
23 governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable
24 claims or dismiss the complaint, or any portion of the complaint, if the complaint
25 "is frivolous, malicious, or fails to state a claim upon which relief may be
26 granted," or "seeks monetary relief from a defendant who is immune from such
27 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
28 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 essential elements: (1) that a right secured by the Constitution or laws of the
3 United States was violated, and (2) that the alleged violation was committed by a
4 person acting under the color of state law. West v. Atkins, 487 US 42, 48 (1988).

5 **Legal Claims**

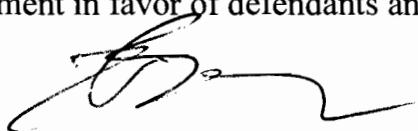
6 A negligent or intentional deprivation of a state prisoner's property fails to
7 state a due process claim under § 1983 if the state has an adequate post-
8 deprivation remedy. See Hudson v. Palmer, 468 U.S. 517, 533 (1984).
9 California Law provides such an adequate post-deprivation remedy for
10 deprivations of property. See Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir.
11 1994) (citing Cal. Gov't Code §§ 810-895). Plaintiff's allegations fail to state a
12 claim cognizable under § 1983. See id. at 817.¹

13 **CONCLUSION**

14 For the foregoing reasons, the complaint is DISMISSED under the
15 authority of 28 U.S.C. § 1915A(b)

16 The clerk shall enter judgment in favor of defendants and close the file.
17 SO ORDERED.

18 DATED: Jan. 07, 2009



19
CHARLES R. BREYER
United States District Judge

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25
26 ¹A prisoner is not protected by the Fourth Amendment against the seizure,
27 destruction or conversion of his property. See Taylor v. Knapp, 871 F.2d 803,
806 (9th Cir. 1989).